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1 The Union also sought to accrete the Assistant Vice Provost for Research Compliance at UMass Boston. On March 23, 2018, the Union partially withdrew its petition with respect to this title because it was unfilled.

1 conference, the PSU argues that the disputed title is a non-academic, professional
2 position that shares a community of interest with other high level, supervisory positions in
3 its bargaining unit. The University opposes the petition on grounds that the incumbent is
4 a managerial employee within the meaning of Section 1 of M.G.L. c. 150E (the Law), and
5 a supervisor who supervises other bargaining unit member The University also claims
6 that it appropriately classified the position within the Provost job family and thus, the
7 position is excluded from the unit under the express terms of the parties' collective
8 bargaining agreement (CBA).

9 On November 20, 2019, the DLR sent the parties a letter asking them to show
10 cause why the petition should not be resolved based upon the information summarized
11 therein. The parties filed separate responses on December 5 and 6, 2019. respectively.
12 Both responses contained corrections and updates.

13 After reviewing the responses and incorporating the suggested changes, the
14 Commonwealth Employment Relations Board (CERB) has determined that there are no
15 material disputes of fact, and grants the PSU's petition. As explained below, we do not
16 find that the AVP at issue is a managerial employee or that the exclusion of certain
17 Provosts in the parties' recognition clause bars the inclusion of this title in the bargaining
18 unit. We further find that the AVP shares a community of interest with certain other
19 members of the PSU bargaining unit in terms of skills, duties, level of education, years of
20 experience, and salary,

21 Background

22 PSU Unit Composition

23 Article 1, the recognition clause of the parties' July 2014-July 2017 CBA, states in
24 pertinent part:

Section 1.1

The Employer/University Administration agrees to recognize the Union as the exclusive representative...for full-time and regular part-time non-academic professional staff bargaining unit members employed at the Boston and Amherst campuses of the University. The unit includes the following state job titles: Staff Administrator; Staff Associate; Staff Assistant...Assistant Director of Procurement; Athletic Trainer; Assistant Director of Guidance and Counseling; Director of Sports Publicity; Registrar; Associate Dean of Admissions; Superintendent of Building and Grounds; Editor; Assistant Dean of Students.

The unit shall exclude all academic professional, faculty members, librarians I-V, all classified employees, all managerial employees, all professional employees employed in a confidential capacity, all casual and temporary employees and all other employees. All professional staff employees in the following state job titles are specifically excluded from the unit: Chancellor; Associate Chancellor; Assistant Chancellor; Vice Chancellor; Associate Vice Chancellor; Assistant Vice Chancellor; Provost; Associate Provost; Assistant Provost; Dean; Associate Dean; Assistant Dean; Dean of Students; Controller; Chief Project Engineer; Director of Campus Center; Director of Research Computing Center,...Director, Office of Sponsored Projects (Boston).

All professional staff employees assigned to the following areas reporting to the President's Office are specifically excluded from the unit: University Controller's Office; University Treasurer's Office; The Maurice Donahue Institute for Governmental Services; Internal Audit Department...

The professional staff positions set forth in Exhibit A (Amherst Campus) and Exhibit B (Boston Campus) of [DLR] Case No. SCR-2198 are excluded from the unit, as well as those positions listed in the Stipulation and Agreement executed on September 13, 1989 and the Stipulation and Agreement executed on March 16, 1990.²

Section 1.2

² The CERB takes administrative notice of the certification issued on October 24, 1989 by the former Labor Relations Commission (LRC) in Case No. SCR-2198. The LRC certified SEIU, Local 509 as the exclusive representative of a non-academic professional staff unit at UMass Boston and Amherst. Another union, the "Professional Services Association," was on the ballot in the 1989 election but did not prevail. The certification includes a list of included and excluded titles that are almost identical to the PSU recognition clause excerpted above. The record does not reflect when or how the SEIU ceased, and the PSU began, representing the professional staff bargaining unit at issue here.

1
2 In the event of the creation of a new personnel classification(s), the
3 Employer/University Administration shall notify the Union within
4 sixty...calendar days...of the [Employer's] determination of the inclusion or
5 exclusion of the position(s) in/from the bargaining unit. If the Union
6 disagrees with the ...determination, the disagreement shall be submitted by
7 the Union to the [DLR] within...180 calendar days of the notification...for
8 resolution of the matter.
9

10 In 2018, the PSU bargaining unit consisted of 1880 employees across numerous
11 departments on both the Amherst and Boston campuses. Of those 1880 employees,
12 there are currently 603 or 6043 PSU members at UMass Boston. The bargaining unit
13 includes employees who have supervisory duties and who supervise other PSU
14 bargaining unit members.

15 Since 1996, UMass Boston and UMass Amherst have used a negotiated
16 "Professional Staff Job Classification System" to evaluate bargaining unit positions to
17 determine their grade level. The classification system includes twelve basic elements,
18 including Judgment and Initiative, Independent Action, Interrelationships, and
19 "Supervisory Responsibility A" and "Supervisory Responsibility B." Under each of those
20 headings, there are different factors for which a position receives points. The total
21 number of points determines the position's grade. The grade levels for PSU bargaining
22 unit members range from 25-36, with eight steps at each grade level. Historically, and
23 as codified in Appendix # 6 to the parties 2017-2020 CBA, positions at UMass Amherst
24 are issued a grade that is three levels lower than the numerical grade assigned to a
25 comparable position at UMass Boston.⁴ For example, positions that fall within a point

3 The parties disagree as to the exact number.

⁴ The record does not indicate the reason for the grade disparity.

1 range of 245-256 would be a Grade 35 at UMass Boston, but would be a Grade 32 at
2 UMass Amherst.

3 As of 2018, there were fifty-one bargaining unit members who had an annual
4 \$100,000, and eighteen who earned \$115,000 or higher.⁵

5 **The Office of Research and Sponsored Programs (ORSP)**

6 As of 2018, the ORSP was organized into three divisions: Pre-Award, Post-Award
7 Services and Research Compliance. Since August 1, 2011, Matthew Meyer (Meyer) has
8 been the Associate Vice Provost for Research and Director of ORSP. In this capacity,
9 Meyer heads all three sides of ORSP, and, according to his job description is responsible
10 for "administering university-wide pre-award research development, post-award research
11 support, and research compliance operations." His duties include managing information
12 related to sponsored programs including overseeing "the development and maintenance
13 of an up-to-date compendium of University policies and procedures concerning
14 sponsored programs."

15 Meyer reports to the Vice Provost for Research and Strategic Initiatives, who in
16 turn reports to the Provost. A total of four employees across each of the three sides report
17 directly to Meyer: the Assistant Director of ORSP, Pre-Award Services; the AVP for
18 Research Accounting and Financial Compliance at issue here, and two PSU bargaining
19 unit members in the Research Compliance Group.⁶

⁵ The University's response to the show cause letter indicates that as of November 1, 2019, there were 71 PSU bargaining unit members in Boston who earned over \$100,000 in base compensation. Of those, 27 received over \$115,000 in base compensation.

⁶ It appears from the parties' responses to the show cause letter that the University has decided not to fill the AVP for Research Compliance position referenced in footnote 1.

1 Meyer also heads an area titled "Core Facilities, Research Development and Tech
2 Transfer," which contains a number of professional positions, including two PSU
3 employees who report to Meyer on a part-time basis. Thus, AVP for Research Accounting
4 and Financial Compliance is the only non-PSU unit member who reports to directly to
5 Meyer.

6 ORSP's mission is to "assist University faculty who are engaged in externally-
7 funded grant research and other activities by providing direction, information, and
8 technical assistance throughout the grant proposal (pre-award) and funding (post-award)
9 process." Its main functions are described below.

10 **Grant Process**

11
12 The grant process begins when faculty members apply for a grant. The Pre-Award
13 division coordinates the application process. If a grant is awarded, the University loans
14 the money to the recipient and gives the faculty member authorization to spend the
15 amount of the grant. The grant is then set up and entered into the finance system. The
16 Post-Award Services staff are responsible for reviewing all expenditures and financial
17 transactions to support research to make sure that the award's terms and conditions are
18 met and that there is regulatory compliance with state, and federal policy. Post-Award
19 Services employees are also responsible for financial analysis of awards; setting up and
20 maintaining the PeopleSoft database; financial analysis of awards; preapproval of
21 obligations and expenditures on grants; billing to the sponsor; cash deposits; financial
22 reporting to the sponsor; and monitoring accounts receivable and collections.

23 In 2011, UMass Boston researchers received approximately \$50,000,000 in grant
24 money. The money came from between 150 and 200 different sponsors and was
25 distributed across approximately 500 grants. As of 2018, the dollar amount of the grants

1 had increased to \$63,000,000, although the number of sponsors and different grants
2 stayed about the same.

3 **Audits**

4
5 The ORSP has responsibility for two main outside audits of grant funding. The first
6 is the Single Audit under the Uniform Guidance for Federal Awards (formerly known as
7 the A-133) audit. This audit occurs each year, with a larger version every three years. Its
8 purpose is to determine whether there has been compliance with federal requirements
9 for receiving federal funding. The University hires private contractors to conduct the audit.
10 Prior to Meyer's arrival, the Controller's officer at UMass Boston played a significant role
11 in the coordination of this audit.

12 The second type of audits are sponsor-driven grant audits. These can occur
13 between one and three times a year.

14 Since Meyer's arrival, ORSP has taken a lead role in coordinating both types of
15 audits, with the UMass Boston Controller's office taking on a more supportive role. Post-
16 Award division employees are also expected to implement the results of audits and take
17 corrective measures as necessary. As described below, the structure of the Post-Award
18 Division has changed since 2017, when the University hired Jennifer Crockett (Crockett)
19 to fill the AVP position at issue here.

20 **Structure of ORSP Post-Award Division before 2017**

21
22 Between 2014 and 2017, two PSU bargaining unit members headed the Post-
23 Award Services division: the Post-Award Research Manager, Grade Level 33, and the
24 Manager of Billing, Accounts Receivable and Financial Analyst, Grade Level 33 (Assoc.
25 34). The 2013 job description of the Post-Award Research Manager contained the
26 following summary:

1 Reporting to the Director of [ORSP], the Post-Award Research Manager will
2 provide supervision of the post-award services to faculty and staff and will
3 be responsible for monitoring, analyzing and continuously improving upon
4 the business processes of the post-award operations. As a senior member
5 of the ORSP management team, the incumbent will be responsible for
6 directing and leading towards the office and university goals and strategic
7 initiatives. The incumbent is expected to have extensive experience in all
8 aspects of post-award services, know what is needed and how to build and
9 run a first-rate post-award support operation.

10
11 The duties listed on the job description include:

- 12 • Design and implement a cohesive and flexible post-award management
13 [sic] of sponsored funding that...builds processes to support ORSP and
14 the research community;
- 15 • Supervise and provide guidance to the Senior Post-Award Administrators
16 in carrying out their daily activities;
- 17 • Coordinate and direct external and internal auditors in their examination
18 of active and terminated projects.

19 The minimum qualifications for the position include a bachelor's degree in
20 business, finance or a similar area relevant to post-award grants administration, master's
21 degree in business, finance or a similar area preferred, and a minimum of seven-ten years
22 of professional experience in research administration or sponsored programs in an
23 academic or equivalent setting. The position also requires "extensive experience and
24 knowledge in coordinating and supervising federal financial reporting requirements,
25 including OMB Circular A-133, A-21, A-11 and PHS Grants Policy statement;" and a
26 "[d]emonstrated high degree of initiative and independent judgment and the ability to work
27 as a team member with the ORSP and other central administrative units of the
28 university... The 2013 job description also indicated that the Post-Award Manager
29 directly supervised the full-time Post-Award Administrator team, comprised of three non-
30 student employees.

1 Hugh Christian (Christian) was the Post-Award Manager from May 2014 until May
2 2015. In a farewell email that Meyer wrote to ORSP staff, Meyer praised Christian for
3 displaying "key leadership" during "two federal audits with potential multi-million-dollar
4 risks."

5 The Employer posted Christian's vacancy in the summer/fall of 2015. Crockett
6 was among the applicants for the position. The University offered her the job, but she
7 turned it down due to its salary. In December 2015, the Employer deemed the search to
8 replace Christian a "failed" search."⁷

9 **Manager for Billing, Accounts Receivable (A/R) and Financial Analysis**

10
11 The second Manager who led the Post-Award division before 2017 was the
12 Manager for Billing, Accounts Receivable and Financial Analysis, Grade Level 33 (Assoc.
13 Grade 34). According to a 2013 job description, the general responsibilities of this
14 position included:

15 [P]rovide supervision and oversight over the University's externally funded
16 grant/ contract billing, accounts receivable and cash management team and
17 will also be responsible for managing reporting demands for ORSP. As a
18 key member of the ORSP management team, the incumbent will be
19 responsible for directing and leading the team towards the office and
20 university goals and strategic initiatives. The incumbent is expected to have
21 extensive experience in all aspects of billing, accounts receivable and cash
22 management business processes, as well as extensive experience in the
23 management of financial reports, in all areas of research administration.
24

25 The job description included the following examples of duties:

⁷ This was not the first time that Crockett had applied for a job in ORSP. In September 2014, the Employer hired her as a Grade 34 Grant and Contract Administrator III (Pre-Award) at a salary of \$92,500. The Union filed a grievance because Crockett's salary exceeded the maximum advertised rate of \$74,997 and requested that the Employer increase the salary of all other Grant and Contract Administrator III's to at least \$92,500. The University subsequently rescinded the salary offer. Crockett declined the position.

- 1 • Supervise and provide guidance to the Billing, A/R and Cash Management
2 Specialist staff in carrying out their daily activities...;
- 3 • Create, run, review and analyze queries and reports to oversee billing and
4 A/R...;
- 5 • Work closely with senior-level administrators and departmental staff to
6 ensure compliance with sponsor requirements;
- 7 • Participate in fiscal year-end close and general financial statement audit
8 lead.

9 The minimum requirements for this position included a bachelor's degree in
10 accounting, financial management or management systems, master's degree preferred,
11 with a minimum of seven-ten years of experience and in-depth knowledge of billing,
12 accounts receivable and cash management financial business processes. As of 2013,
13 this employee directly supervised two non-student employees.

14 Rebecca Hanson (Hanson) held this position from July 2013 until August 2016.

15 **Assistant Director of ORSP Post-Award Support Services**

16 The University created and posted this PSU position in the fall of 2016 after it was
17 unsuccessful in filling Christian's position.⁸ Its job description was very similar to the Post
18 Award Research Manager's job description in terms of duties, qualifications and
19 requirements. The main difference was that the Assistant Director position was classified
20 at a Grade Level 35 and contained additional duties including:

- 21 • Work with the Associate Vice Provost/Director to select, design, implement
22 and evaluate workshops, seminars, new faculty orientation programs and
23 other face-to-face and technology-mediated training activities concerning
24 such topics as university policies and procedures related to post-award
25 sponsored programs, post-award research administration resources
26 available within the ORSP;
27

⁸ As described below, at this point, the Employer was still waiting to get final budget approval for the new AVP of Research Accounting and Financial Compliance that it created in April 2016.

- 1 • Assist the Director of ORSP to hire and then supervise, train and support
2 the professional and classified staff members within the post-award
3 research administration team of ORSP;
- 4 • Responsible for collaborating and developing improved process between
5 all ORSP units...;
- 6 • Carry out duties and responsibilities as required by the Associate Vice
7 Provost/Director of ORSP, such as representing the director at meetings of
8 university committees and meetings with other units of the university
9 concerning ORSP sponsored programs and ORSP research administration
10 functions.

11 Under the heading "Supervision Received," the job description stated that the
12 position "reports to and is supervised by the Associate Vice Provost for Research and
13 Director of ORSP; however, as a member of the ORSP management team, has extensive
14 independence and authority for post-award responsibilities." The Post-Award Manager's
15 job description did not contain this language.

16 Crockett applied for and was offered the position in the fall of 2016 but turned it
17 down because she was seeking a salary that was \$20,000 higher. In March 2017, the
18 Employer deemed the Assistant Director position to be a "failed" search.

19 **The Disputed Position: AVP of Research Accounting and Financial**
20 **Compliance**
21

22 The University originally proposed this position to the Union as a non-bargaining
23 unit position in April 2016 as part of a reorganization of the Post-Award Services division.
24 It claims that it intended the position to be an amalgam of the two PSU Post-Award
25 manager positions described above, with expanded duties modeled on two UMass
26 Amherst Controller positions, the Senior Assistant Controller and the Audit and Grant
27 Compliance Manager.

Although first proposed in 2016, the position was not funded or posted until May 2017. The 2017 posting for the Research Accounting and Financial Compliance position stated in pertinent part:

The Assistant Vice Provost for Research Accounting and Financial Compliance will work under the direction of the Associate Vice Provost for Research and Director of ORSP and will plan, schedule and direct grant accounting functions for all ORSP activities which include externally funded grant and contract post award activities. The incumbent will make decisions in conformance with University, State and Federal policies, as well as 2 CFR Part 200, A21/A110 and A133, Generally Accepted Accounting Procedures (GAAP) and National Association of College and University Business Officers'... guidelines, policies and regulations; and will act in place of the Associate Vice Provost for Research/Director of ORSP for all accounting and fiscal compliance areas during his/her absence. Duties include, but are not limited to:

- Plan, direct and schedule grant accounting functions for [ORSP]; directly supervise and schedule work assignments for professional staff, accountants and associated clerks in ORSP post-award;
- Oversee audits associated with post award and research accounting; coordinate information provided to auditors and outside agencies for campus financial statement, A-133/Single Audit and individual grant and contract audits; work with the Controller's Officer and other departments in replying to audit findings and make recommendations to implement policies and procedures resulting from audits;
- Act as liaison between departments, centers and institutes as well as the Office of Budget and Financial Planning and the Controller's Office, and Federal/State agencies and sponsors with respect to all matters concerning the interpretation of Federal regulations and audits; work closely with deans, department heads and research faculty on matters related to the allowability of costs;
- Manage the design, development and implementation of ORSP financial systems including PeopleSoft Financial/Grants modules;
- Manage complex daily and monthly interface processes for the establishment and update of Grant and Contract information in the PeopleSoft Financial System;
- Responsible for the accuracy of all recorded Grant and Contract financial data, including account attributes, budgets, direct and indirect expenses and revenues;
- Responsible for the accuracy of all recorded Grant and Contract financial data; ...
- Oversee accounts receivable follow-up with Federal, State, College/University, non-profit corporations and private businesses;...

- 1 • Responsible for control and approval of journal entries for ORSP for
2 processing in accounting systems; oversee the timely billing, reporting and
3 collection of research awards;
- 4 • Assist in the update of the ORSP Manual and Job Aides; present or
5 participate in workshops for University employees on related grant financial
6 accounting procedures;
- 7 • Interview, recommend for hire and train personnel; establish and assess
8 performance goals within his/her areas of responsibility; establish personnel
9 evaluation standards, evaluate work performance and take appropriate
10 action;
- 11 • Oversee the financial integrity of all Research Core Facilities;
- 12 • Serve as ORSP Liaison for the negotiation of the Department of Health and
13 Human Services . . . Facilities and Administration indirect cost rate;
- 14 • Perform other duties as assigned.

15 The job requirements included a bachelor's degree, with an MBA, CPA or a closely
16 related master's degree preferred, and seven to ten years of related managerial
17 experience in the management of complex automated financial systems, financial
18 analysis, auditing and the preparation of financial reports in accordance with complex
19 regulations. Other requirements for this job included "[s]trong interpersonal and
20 supervisory skills." The posting indicated that this title directly supervises 6-10 non-
21 student employees, with no indirect reports.

22 **Structure and Staffing of ORSP Post-Award Division after 2017**

23
24 The Employer hired Crockett as the first AVP of Research Accounting and
25 Financial Compliance in August 2017 at an annual salary of \$115,000. Crockett's resume
26 reflects over a decade of grants management experience at several institutions of higher
27 learning, and two master's degrees in public administration.

28 As of February 2018, five PSU titles reported directly to Crockett: two Senior Post-
29 Award Administrators (Grade Level 32, Associated to Grade 33) and three Post-Award
30 Research Administrators (Grade Level 30). The duties of the Senior Post-Award
31 Research Administrator include "coordinat[ing] and direct[ing] external or internal auditors

1 in their examination of active and terminated projects.” According to a 2013 job
2 description, this position is a “highly technical position with significant teambuilding
3 responsibilities.” Incumbents in this position are required to have “background and
4 experience in coordinating and supervising federal financial reporting requirements
5 including OMB Circular A-133, A-21, A-110 and PHS Grants Policy FAR [Federal
6 Acquisition Regulations].” Post-Award Research Administrators were classified as Grade
7 30, and had similar duties and responsibilities, but as team-members, not coordinators.

8 In February 2019, Crockett, in conjunction with the Human Resources Department,
9 reorganized the Post-Award Division and created a new job family called "Financial
10 Research Administrator (FRA), with levels I-IV. The new positions are PSU positions
11 ranging from Grade 28 for an FRA I to a Grade 34 for an FRA IV. According to a memo
12 that Crockett wrote in February 2019, the purpose of the position was to combine two
13 previously separate Post-Award functions, billing and accounts receivable, and award set
14 up and financial reporting, into one role. According to Crockett, this new job family has
15 blended post-award responsibilities that are “better positioned in assisting and offering
16 guidance to [Principal Investigators] and grants staff throughout the life cycle of an
17 award.” The job descriptions for all titles indicate that they report directly to the AVP for
18 Research Accounting and Financial Compliance. The level assigned is a function of the
19 complexity of the award and years of experience doing comparable work. Of the five
20 Post-Award administrators who previously reported to Crockett, only one still works in
21 ORSP. As a result of the reorganization, a former Senior Post Award Administrator Grade
22 32, was promoted to an FRA IV, Grade 34. As of this decision, three of the five FRA
23 positions were filled.

1 Labor Relations Responsibilities

2 Since being hired, Crockett has served as the first step of the grievance procedure
3 in the Post-Award division.⁹ She has not, and is not expected to, participate in collective
4 bargaining.

5 During Crockett's first year at UMass Boston, the PSU filed two Step 2 grievances
6 on behalf of bargaining unit members who reported directly to her. The first grievance
7 alleged that the grievant's supervisor had assigned duties to her that were outside of her
8 job description. The second grievance alleged, among other things, that the grievant's
9 supervisor had harassed him and issued unwarranted written warnings.¹⁰

10 Supervisory Duties

11 Crockett's supervisory duties include developing and writing evaluations and
12 handling time off requests. She can also make non-final recommendations for hiring and
13 firing, but she had not made any such recommendations as of the investigation. If any
14 performance issues are uncovered during an audit, Crockett is expected to deal with such
15 issues to ensure compliance.

16 Crockett is a member of the Grant Working Group, which the UMass President's
17 office runs twice a month with representatives from the different campuses. The ORSP
18 Assistant Director, Pre-Award Division, described below, is also part of this group.

⁹ Pursuant to Article 7, Section 7.5 of the parties' CBA, the aggrieved employee's immediate supervisor is the first step of the grievance process and the Vice Chancellor or Chancellor is Step 2. Before Crockett was hired, Meyer was the first step in the grievance procedure for PSU bargaining unit members in ORSP.

¹⁰ Neither grievance referred to Crockett by name.

Assistant Director, Pre-Award Division

This Grade Level 35 PSU position existed before Crockett was hired. As set forth in a 2013 job description, the incumbent is:

[R]esponsible for implementing a high-quality, excellence-driven approach to supporting externally funded programs at the university. While focusing on pre-award activities, the Assistant Director must be actively engaged with post-award and compliance activities to ensure an effective grants management program. The Assistant Director is responsible for ensuring the pre-award staff (Grant and Contract Administrator I-III) are providing the best service and support to faculty, research staff and administrators working in ORSP.

Shayla Bonyun (Bonyun) held this position both before and after Crockett was hired. As of 2018, she was the only professional in ORSP, other than Crockett, who reported directly to Meyer. Bonyun's duties include:

- Supervise the ORSP pre-award grant and contract administrators; ensure pre-award staff are providing effective oversight, customer service, training and leadership to faculty, research, staff and administrators in the process of preparing and submitting externally funded proposals and the oversight of externally funded awards;
- Serve as an Institutional Signatory as certified by the Board of Trustees of the University;
- Carry out duties and responsibilities as required by the Director of ORSP, such as representing the director at meetings of university committees and meetings with other units of the university concerning ORSP sponsored programs and ORSP research administration functions; responsible for collaborating and developing improved processes between all ORSP units...;
- Assist the Director of ORSP to hire and then supervise, train and support the professional and classified staff members within the pre-award research administration team of ORSP'
- Assist the Director of ORSP and the Research Compliance Manager to deliver and implement policies and procedures related to research administration of sponsored programs and ensure the effectiveness of implemented policies and procedures.

The minimum qualifications listed in the job description are a bachelor's degree in business, public administration, finance communications or a closely related field with a

1 master's preferred. Required experience includes demonstrated pre- and post-award
2 financial management experience; demonstrated experience with all types of award
3 mechanisms; additional expertise in human-subject compliance; intellectual property;
4 conflict of interest; sub-awards; procurement; property management; environmental
5 health and safety and human resources; and extensive knowledge of grant development,
6 submission and program administration guidelines of both federal and non-federal
7 funding agencies. The position also requires a "demonstrated ability to supervise and
8 lead a team," and the job description indicates that this title supervises 5.5 non-student
9 employees, with between 0 and 1 indirect reports. Preferred qualifications included
10 "previous supervisory experience."

11 **Other PSU Director and Associate Director Positions**

12
13 The PSU unit contains a number of Director and Associate Director positions
14 whose job descriptions reflect high-level leadership, planning, and administrative
15 responsibilities within their departments. The job descriptions for at least three of those
16 positions reflect significant responsibility for obtaining, distributing and/or accounting for
17 large sums of money. For example, the job description for the Director of Financial Aid,
18 Grade Level 35, states that the incumbent will serve as a "senior member of the division
19 of Enrollment Management team" and "will direct a comprehensive financial aid operation
20 that includes federal, state and institutional aid programs of approximately \$150 million
21 annually." The job description further states that the Director "will provide leadership,
22 vision and direction for the administrative and operational activities of a service-
23 oriented...office that is central to the university's strategic goals involving student
24 recruitment and retention." Duties include serving as a senior liaison for the federal and

1 state financial aid program audit (A-133) and federal and state program reviews. The
2 incumbent directly supervises five non-student employees.

3 The job description for the Senior Director of Advancement Services, Grade Level
4 35 (with a salary associated to Grade 36), reflects that the incumbent is responsible for
5 the management and oversight of gift processing, database management, records
6 maintenance and prospect research. The job description states that the incumbent "will
7 serve in a leadership role within the department and be part of the senior level decision
8 making team." The job description also states that the incumbent supervises the Director
9 of Prospect Research and Director of Information Services; works closely with the Vice
10 Chancellor, Associate Vice Chancellor and front-line fundraisers to identify major gift
11 prospects throughout the country and identifies international major gift prospects. Other
12 duties include to hire, train, supervise and evaluate staff. The Senior Director of
13 Advancement Services is also expected to "ensure compliance with all applicable laws,
14 rules and regulations as mandated by the IRS, FASB, and GASB."

15 Another PSU title, the Director of Finance, Division of Athletics & Recreation,
16 Special Projects and Programs, Grade Level 33, is responsible for the general
17 management and oversight of the division's multiple accounts totaling approximately \$5
18 million annually. This position is also responsible for the general management and
19 oversight of the Division of Athletics' multiple accounts and "lead[ing] a wide range of
20 financial and strategic initiatives, long-range financial planning and strategic capital
21 planning," and "creat[ing] systems to improve/streamline all financial processes within
22 athletics."

23 The job description for the Senior Associate Director of Athletics states that the
24 incumbent is responsible for strategic planning and developing policies to implement

1 external rules and regulations. This Grade Level 35 position provides “leadership,
2 management, planning and administration over the day-to-day operations of the
3 Intercollegiate Athletics Program, including hiring and supervising of staff and program
4 expenses.” Duties include directly supervising, managing and evaluating the daily
5 operations and staff of the facilities component of the division. The incumbent reports
6 directly to the Vice Chancellor for Athletics and “assists the Vice Chancellor in the
7 development of the strategic plan for the Intercollegiate Athletic Program, as well as
8 providing on-going vision and strategies to ensure its success.”

9 **Other Assistant Vice Provosts**

10
11 The University began using the title “Assistant Vice Provost” around 1999.¹¹ In
12 2018, there were six AVPs at UMass Boston including Crockett. Four of the AVPs work
13 in the Information Technology (IT) Department and report to the Vice Provost for
14 Information Technology/CIO. There is also an AVP for Advising, who heads the
15 University Advising Center, which falls under Academic Support Services and
16 Undergraduate Studies. No AVP titles are in the PSU. Their annual salaries range from
17 Crockett’s salary of \$115,000 to \$133,164 for the AVP for Communications and
18 Infrastructure.

19 The four IT AVPs are: 1) AVP, Communications and Infrastructure Services; 2)
20 AVP, Application Services; 3) AVP, IT Client Services; and 4) AVP, Business Operations.
21 The 2012 job description for the AVP, Communication and Infrastructure Services
22 indicates that incumbent is “accountable for the planning, budgeting and delivery of all

¹¹ In addition to the six AVPs referenced above, as of 2018, there were eleven other employees with the word “Provost” in their title: one Interim Provost, three Vice Provosts, three Associate Provosts, and four Associate Vice Provosts.

1 infrastructure support services for the University and works with the Information
2 Technology Services Division team to develop strategic direction and policy for the
3 Communications and Infrastructure Services unit." Under Supervision Received, the job
4 description for this, and the other two AVP titles described below, states that the
5 incumbent "exercises extensive independent judgment and initiative to accomplish
6 responsibilities, with the guidance of and performance evaluation by the Vice Provost for
7 IT/Chief Information Officer." The position directly supervises five non-student employees
8 and indirectly supervises thirty non-student employees.

9 The 2010 job description for the AVP for Application Services states that this title
10 "works under the direction of the Vice Provost for Information Technology and is
11 accountable for the planning, budgeting and delivery of all Application Services support
12 services." It further states that this position "works with the ITSD leadership team to
13 develop strategic direction and policy for the entire unit." The job description refers to this
14 title as being a member of the executive management team. This AVP directly supervises
15 three non-student employees and indirectly supervises fifteen non-student employees.

16 The 2015 job description for the AVP of Client Services states that this position is
17 "responsible for the leadership and effective delivery of all aspects of Information
18 Technology Customer Support." The position develops "dynamic processes and
19 procedures that ensure consistent service delivery by a large and diverse staff." The job
20 description indicates that this title directly supervises four non-student employees and
21 indirectly supervises twenty non-student employees.

22 **UMass Amherst Controller's Office**

23
24 As indicated above, the Employer claims that it also based the AVP For Research
25 Accounting and Financial Compliance on two non-bargaining unit positions in the

1 Controller's office at UMass Amherst - the Senior Assistant Controller, Sam Killings
2 (Killings), and the Audit and the Grant Compliance Manager, Denise Storm (Storm).

3 A 2003 job description for Senior Assistant Controller reflects that this position
4 plans, schedules and directs accounting department functions for Research Accounting
5 operations, including Grants & Contracts and Cash Management. Like Crockett and
6 Christian, the incumbent in this position is expected to make decisions in conformance
7 with various University and regulatory guidelines, including Federal A133 guidelines.
8 Killings was not a member of the PSU's bargaining unit. He retired in 2015. As of 2018,
9 there were no Senior Assistant Controllers in this department, but there were two
10 Assistant Controller positions, one of which is vacant. The filled position is held by Glenn
11 Hartmann, who is in the PSU bargaining unit.

12 The job summary in the Audit and Grant Compliance Manager's 2015 job
13 description indicates that this position "manages risk based financial compliance reviews,
14 development and implementation of policies and procedures for compliance purposes,
15 post award training, sub recipient monitoring and procard [sic] audit." The position serves
16 "as the principal liaison for auditor and outside agency examination of grant accounting
17 activity." The position description indicates that the incumbent is expected to handle
18 confidential information related to grants including personnel, and that audit findings can
19 result in employee discipline and/or institutional penalties. The Audit and Grant
20 Compliance Manager directly supervises one to three non-student employees and has
21 no indirect reports.

22 The Controller's Office at UMass Amherst consists of thirty-six employees, sixteen
23 of whom are in the PSU bargaining unit. Among the included titles are Grade Level 26
24 Research Accountants. According to a 2016 job description, their duties include

responsibility for all aspects of post-award management of research grants and contracts including preparation, review and approval of budgets, transactions, billings and reports of expenditures. Requirements include being able to interpret complex grant and contract terms in conformance with Federal, State and University guidelines.

The UMass Amherst Controller's Office also employs multiple Grade Level 27 Senior Research Accountants. According to a 2010 position description, the Senior Research Accountants supervise the Research Accountants and work closely with the Research Accounting Manager to develop processes to improve efficiencies in the department, plan, direct and schedule work for staff and recommend appropriate personnel action. Senior Research Accountants also assist the Audit and Grant Compliance Manager with audit issues and work with the Research Accounting Manager, Grants Compliance Manager, and internal and external auditors on post audit of research accounting transactions for compliance of allowable sponsor charges and other grant activity.

UMass Boston Controller's Office

The Controller's Office at UMass Boston consists of fourteen employees, four of whom are in the PSU bargaining unit: the Business Process/Systems Analyst, the Accounts Payable Manager, the Director of Cost Accounting, and the Financial Analyst.

According to a 2008 position description, the Business Process and Systems Analyst, a Grade Level 32 position, is responsible for developing, implementing and updating the Controller's Office policies and procedures, along with administration of the finance system security access and the development of analytical reports. The requirements include expertise in the official University accounting system, standard accounting practices and procedures, as well as knowledge of the many Federal, State,

1 and Trustee regulations, policies and procedures. This position has no supervisory
2 authority.

3 According to a 2005 position description, the Grade Level 33 Director of Cost
4 Accounting directs campus-wide cost accounting activities and ensures the University's
5 compliance with federal cost principles and accounting standards, including OMB Circular
6 A-133. He/she examines cost accounting methodologies and practices to ensure
7 compliance as well as optimization of overhead recovery and establishes cost accounting
8 policies. This position also develops campus costing models and advises senior
9 managers on regulatory issues and their impact on campus operations. This position has
10 no supervisory authority.

11 Opinion¹²

12 In analyzing whether employees should be accreted into an existing bargaining
13 unit, the CERB uses a three-step test. First, the CERB determines whether the position
14 was included in the original certification or recognition of the bargaining unit. Second, if
15 that examination is inconclusive, the CERB will examine the parties' subsequent conduct,
16 including bargaining history, to consider whether the parties considered the position to be
17 excluded from the unit. Finally, if that inquiry is also inconclusive, the CERB will examine
18 whether the positions sought to be included in the unit share a community of interest with
19 the existing positions. If the CERB determines that the requisite community of interest
20 exists, it will accrete the petitioned-for employee into the existing bargaining unit. Town
21 of Granby, 28 MLC 139, 141, CAS-3477 (October 10, 2001); Town of Dartmouth, 22 MLC
22 1618, 1621, CAS-3086 (March 15, 1996).

¹² The CERB's jurisdiction is uncontested.

1 Here, the first step of the test is inconclusive because the AVP for Research
2 Accounting and Financial Compliance was created in 2016, long after the unit was first
3 certified.

4 The second step, which examines how the parties treated the disputed position, is
5 also inconclusive. The University claims that the titles in the Provost family are excluded
6 from the unit pursuant to the express terms of the CBA. This is wrong for two reasons.
7 First, although the parties agreed in the recognition clause to exclude a number of
8 different Provost titles, the "Assistant Vice" Provost is not among those titles. That the
9 parties expressly agreed to exclude "Assistant Vice" Chancellors" in addition to other
10 Chancellor titles demonstrates that the parties recognize that the "Assistant Vice" prefix
11 is a separate title that warrants separate mention in the recognition clause.

12 Second, in determining whether a position shares a community of interest with
13 other bargaining unit positions, the CERB looks to the actual duties and responsibilities
14 of the position, rather than just the title given to the position. University of Massachusetts
15 (Dartmouth), 37 MLC 67, 71, CAS-08-3720, (October 1, 2010). Therefore, although none
16 of the five other AVP titles described above are in the PSU, absent bargaining history to
17 support a finding that the parties addressed and resolved the unit placement of the
18 disputed AVP title, we are unable to determine that the parties explicitly agreed to exclude
19 it. City of Peabody, 23 MLC 84, 95, CAS-3045 (September 11, 1996).

20 We therefore turn to the final prong of the analysis, where we consider whether the
21 AVP of Research Accounting and Financial Compliance shares a community of interest
22 with the bargaining unit. We first address the University's argument that the contested
23 title is a managerial employee within the meaning of Section 1 of the Law, and thus
24 without collective bargaining rights. Pursuant to the statutory definition:

1 Employees shall be designated as managerial employees only if they (a)
2 participate to a substantial degree in formulating or determining policy, or
3 (b) assist to a substantial degree in the preparation for or the conduct of
4 collective bargaining on behalf of a public employer, or (c) have a
5 substantial responsibility involving the exercise of independent judgment or
6 an appellate responsibility not initially in effect in the administration of a
7 collective bargaining agreement or in personnel administration.

8 M.G.L. c. 150E, Section 1. If the actual duties and responsibilities of the disputed
9 position satisfy any of the three statutory criteria, the position must be excluded
10 from the bargaining unit pursuant to Section 3 of the Law. Town of Bolton, 25 MLC
11 62, 66, MCR-4562 (September 10, 1998).

12 Preliminarily, the University does not argue, and we do not find, that the disputed
13 AVP is a managerial employee under parts (b) or (c) of the above definition. Under part
14 (b), Crockett does not, and is not expected to, participate in collective bargaining. Nor
15 does the position fulfill the criteria under part (c) because she serves only as the first step,
16 and not in an appellate capacity, in the grievance procedure Town of Manchester-by-the
17 Sea, 24 MLC 76, 81 (1998) (citing Wellesley School Committee, 1 MLC 1299, 1301, MUP-
18 2013 (February 27, 1975) *aff'd sub nom* School Committee of Wellesley v. Labor
19 Relations Commission, 376 Mass. 112 (1978)).

20 Nor does the record reflect that Crockett has exercised independent judgment of
21 an appellate responsibility with respect to personnel administration. Although there is no
22 dispute that Crockett has supervisory duties, "[s]upervisory authority itself does not make
23 an employee managerial under the Law." Greater Lawrence Sanitary District, 34 MLC
24 87, 95, MCR-06-5209 (March 4, 2008) (citing Barnstable County, 26 MLC 183, 188, MCR-
25 4744 (March 28, 2000)). We therefore turn to the University's arguments under the part
26 (a) of the definition, that Crockett participates to a substantial degree in formulating or
27 determining policy.

1 To be considered a managerial employee under the first prong of the managerial
2 test, the employee must make policy decisions and determine mission objectives. City of
3 Boston (Boston Public Library), 37 MLC 1, 9, CAS-08-3727 (July 12, 2010) (citing
4 Wellesley School Committee, supra). The policy decisions must be of major importance
5 to the mission and objectives of the public employer, Wellesley School Committee, 1 MLC
6 at 1403, and the employee must participate in the policy decision-making process on a
7 regular basis. Town of Plainville, 18 MLC 1001, 1009, MCR-4019 (June 12, 1991). The
8 words "independent judgment" in the third part of the test requires that an employee
9 exercise discretion without consultation or approval. Manchester-by-the-Sea, 24 MLC at
10 81. Thus, to meet the standards established in the first part of the test, it must also be
11 shown that the employee functions at levels of administration where decisions and
12 opinions will not be screened by another layer of administration before being
13 implemented. University of Massachusetts (Dartmouth), 39 MLC 275, 283 CAS-08-
14 3719/CAS-11-1074 (April 2, 2013) (citing Holyoke School Committee, 4 MLC 1607, 1610,
15 CAS-2048 (December 16, 1977)).

16 We conclude that Crockett does not meet these criteria for several reasons. First,
17 the evidence does not reflect that Crockett independently makes policy decisions or that
18 her decisions are not screened through another layer of administration. The first sentence
19 in the summary of her job description reflects that she works under the general direction
20 of Meyer. Other aspects of her job description reflect that she works with, or at Meyer's
21 direction on a number of duties. For example, while Meyer's job description stating that
22 he is responsible for "oversee[ing] the development and maintenance of an up-to-date
23 compendium of University policies and procedures concerning sponsored programs",
24 Crockett's job description states that she "assists in the update of the ORSP Manual."

1 Second, Crockett reports directly to Meyer, who himself is several layers of
2 administration below the University Provost. There are therefore several intervening
3 levels of administration between her and the University's top management. In this regard,
4 her place in the University's hierarchy is different from the disputed title at issue in our
5 recent decision in Board of Higher Education, CAS-17-6266 (June 27, 2019), where we
6 concluded that the Executive Director for Marketing and Integrated Communications at
7 Fitchburg State University was a managerial employees because, among other things,
8 she reported directly to the President of Fitchburg State and thus had the authority,
9 without any intervening level of administration to plan, develop, budget for and enforce
10 her communications initiatives. Id.

11 Second, although Crockett's job description reflects that she performs important
12 and high-level functions in ORSP, including planning and directing various grant
13 accounting and compliance functions, and managing designing, developing and
14 implementing ORSP financial systems, the job descriptions of other previous ORSP titles
15 that were included in the bargaining unit describe similar high-level duties. That is, the
16 job descriptions for the Post-Award Research Manager, the Manager for Billing, A/R and
17 Financial Analysis and the never-filled Assistant Director, ORSP Post-Award Support
18 Services, refer to them as "members of the ORSP management team" responsible for
19 "directing and leading towards the office and university goals and strategic initiatives."
20 Likewise, the job descriptions for the Post-Award Manager and the Assistant Director
21 positions includes the duties "design[ing] and implement[ing] a cohesive post-award
22 management of sponsored funding that supports the communication of University policies
23 . . . and build[ing] processes to support ORSP and the research community." Although
24 the University emphasizes the important role that Crockett plays in planning for and

1 overseeing the audit process, the record reflects that Christian assumed similar
2 responsibilities when he was the Post Award Research Manager. Thus, there is little to
3 distinguish the duties that the University relies upon to argue that Crockett is a managerial
4 employee from those performed by the employees who preceded her.

5 The fact that the University modeled the new position on two non-unit comptroller
6 titles at UMass Amherst also does not render it a non-unit position. As the Union points
7 out, UMass Amherst is configured differently than UMass Boston. Further, one of the
8 titles upon which the new title was modelled, the Senior Assistant Controller, is no longer
9 filled, and the two Assistant Controllers in the UMass Amherst's Controller's Office are
10 bargaining unit positions. The exclusion of the Audit and Grant Compliance Manager's
11 job at UMass Amherst is also not dispositive, because the job description for that position
12 states that the title is responsible for the "development and implementation of policies"
13 and is expected to handle confidential information. Crockett's job description does not
14 contain similar language. In any event, two out of four of the PSU positions in UMass
15 Boston's Controller's Office, the Business Process and Systems Analyst and the Director
16 of Cost Accounting, have responsibility for developing and establishing cost accounting
17 policies. Thus, the fact that Crockett may also have some policy-making responsibilities
18 does not distinguish her from other PSU bargaining unit members.

19 Finally, the University asks us to consider that Crockett's duties are a combination
20 of tasks performed by the former Post-Award Manager and the Manager for Billing, A/R
21 and Financial Analysis. While the University's decision to combine two positions into one
22 may impact Crockett's workload and mix of duties, it does not, without more, render those
23 duties managerial within the meaning of the Law.

1 We therefore turn to whether Crockett otherwise shares a community of interest
2 with other PSU members. We reject the University's assertion that Crockett's supervisory
3 duties over other PSU bargaining unit members preclude her from having a community
4 of interest with the rest of the PSU unit for the main reason that the PSU is a unit
5 comprised of administrators and supervisors. As detailed above, numerous titles within
6 the PSU including the Senior Director of Advancement Services and existing and former
7 ORSP positions, including Christian's, Hanson's and Bonyun's positions have
8 supervisory duties including assisting or recommending candidates for hire, and
9 evaluating and training other PSU members. While the CERB has recognized that
10 including supervisors in the same unit with the employees they supervise is not ideal, the
11 CERB also has "strong reservations" about adopting an approach to bargaining units that
12 creates more than one supervisory bargaining unit in a particular working force. Sheriff of
13 Worcester County, 30 MLC 132, 138, CAS-03-3543 (April 7, 2004) (citing Lowell School
14 Committee, 8 MLC 1010, 1014, MCR-3117 (May 22, 1981). Accordingly, the fact that
15 Crockett may exercise some supervisory authority over other PSU members does not,
16 without more, prevent her accretion to the unit, and in fact demonstrates that she shares
17 a community of interest with the other supervisors in the unit.

18 To determine whether employees share a community of interest, the CERB
19 considers factors such as similarity of skills and functions, common supervision, work
20 contact, similarity of training and experience and similarity of pay and working conditions.
21 We conclude that the AVP of Research Accounting and Financial Compliance shares a
22 community of interest with other PSU members with respect to all of these criteria. Like
23 three other PSU members, she reports directly to Meyer. Like her predecessor titles in
24 ORSP, Crockett performs high-level administrative and supervisory duties that require

1 her to have experience and a strong background in Post Award financial management
2 and supervising federal financial reporting requirements. Like several other bargaining
3 unit members, Crockett is responsible for accounting for large sums of money and
4 ensuring compliance with the complex federal rules that regulate how the University
5 handles such monies. The minimum education qualifications for the position are
6 comparable to those required for Bonyun's position and the predecessor titles in ORSP.
7 Moreover, Crockett's supervisory duties necessitate contact with the PSU members in
8 Post-Award Services, and she also interacts with Bonyun, who like her, is a member of
9 the Grant Working group.

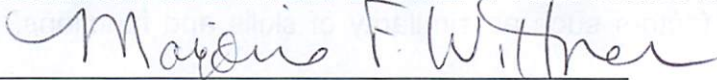
10 Finally, Crockett's salary falls within PSU range and approximately eighteen
11 bargaining unit members earn roughly what Crockett earns, if not more.

12 Conclusion

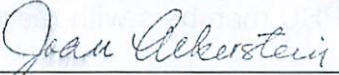
13 For the foregoing reasons, we conclude that the AVP of Research Accounting and
14 Financial Compliance shares a community of interest with members of the PSU's
15 bargaining unit at UMass Boston. We therefore grant the Union's petition to accrete this
16 title to the PSU.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD


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